

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MATTHEW MARTINEZ §
v. § CIVIL ACTION NO. 6:11cv642
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Matthew Martinez, proceeding *pro se*, filed this pleading in the form of a “motion for extension of time in which to seek habeas corpus relief.” This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Martinez states that he is seeking an extension of time in which to file a habeas corpus petition challenging a 2006 conviction for aggravated robbery from Tarrant County, Texas. On December 9, 2011, the Magistrate Judge issued a Report recommending that the request be denied. The Magistrate Judge observed that neither the Federal Rules of Civil Procedure nor the Rules Governing Section 2254 Petitions in the United States District Courts contemplate the filing of a motion for extension of time to file a habeas petition in non-capital cases. The Magistrate Judge also stated that any ruling by the Court on the motion would require a determination in advance as to whether or not Martinez’s petition was barred by the statute of limitations, and if so, whether equitable tolling could be applied. There is no adverse party, as there would be for a petition seeking habeas corpus relief, and so there is no concrete dispute for the Court to decide; accordingly, there is no “case or controversy” and the Court lacks subject matter jurisdiction to grant relief. The

Magistrate Judge noted two cases from the Northern District of Texas arriving at the same conclusion and stated that Martinez's petition could not be construed as seeking habeas corpus relief, rather than an extension of time, because it specified no grounds for habeas corpus relief and did not set out the factual bases for any such claim.

Martinez received a copy of the Magistrate Judge's Report on December 19, 2011, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 4) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application, consisting of a request for extension of time in which to seek habeas corpus relief, is DISMISSED without prejudice for want of jurisdiction. The dismissal of this case shall not prevent Martinez from filing an application for habeas corpus relief, and expresses no opinion upon the timeliness or untimeliness of any such petition, nor upon the applicability of legal or equitable tolling of the limitations period. It is further

ORDERED that any and all other motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 15th day of February, 2012.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS".

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE